

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PNC BANK, N.A., successor by merger
to National City Bank, successor by merger
to National City Bank of Indiana, a division
of which was FNMC,

Plaintiff,

v.

SHEILA M. SPENCER,

Defendant.

OPINION AND ORDER

13-cv-21-bbc

Defendant Sheila M. Spencer removed this foreclosure action to this court from the Circuit Court for Wood County, Wisconsin, on January 10, 2013. It is before the court on plaintiff PNC Bank, N.A.'s motion for remand to state court.

It appears from the brief in support of the motion for remand that state foreclosure proceedings against the property started in April 2009, initiated by an entity known as FNMC. About three months later, defendant filed a petition for bankruptcy and the automatic stay took effect. Later the same year, FNMC merged into and began operating as PNC Bank, N.A. At some point, plaintiff PNC Bank asked for relief from the stay; its motion was granted on September 8, 2011. On December 6, 2011, plaintiff moved for summary judgment. A hearing on the motion was continued after the state court granted defendant's request for a 90-day stay to allow her to undertake discovery and explore the

option of loan modification.

On April 3, 2012, two days before the adjourned hearing was to take place on plaintiff's motion for summary judgment, defendant's lawyer moved to withdraw. Since then, defendant has retained new counsel and has filed a number of motions, including the petition for removal, which was filed on January 10, 2013. Plaintiff filed its motion for remand on February 8, 2013.

Plaintiff contends that remand is proper for a number of reasons. First, 28 U.S.C. § 1441(b)(2) prohibits removal of a civil action otherwise removable on the basis of diversity jurisdiction if the defendant is a citizen of the state in which the action is brought. Although plaintiff has not shown that defendant is a citizen of Wisconsin, the case she has removed involves the attempted foreclosure of her home in Wood County, Wisconsin, and she has resisted for four years. These circumstances make it hard for her to argue that she does not have the intention to continue to live in Wisconsin. Winforge, Inc. v. Coachmen Industries, Inc., 691 F.3d 856, 867 (7th Cir. 2012) ("Citizenship depends on domicile."); Heinen v. Northrop Grumman Corp., 671 F.3d 669, 670 (7th Cir. 2012) (domicile is where a person "intends to live over the long run"). She recognized this in her brief in response to plaintiff's motion, saying that she was no longer arguing that she can remove the case under § 1441.

Second, defendant waited far too long to remove this 2009 case. The applicable removal statute gave her 30 days after she was served or "if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant . . . of a copy of an amended pleading . . . from which it may first be

ascertained that the case is one that is or has become removable.” 28 U.S.C. § 1446(b)(3). She seems to acknowledge this rule, but she argues that it does not apply to her because the case did not become removable until December 2012, when the “real party in interest” (Federal National Mortgage Corporation) was determined. At this point, she argues, a new 30-day period for removal began to run.

Defendant’s arguments in support of this argument are not entirely clear. To the extent that she is arguing that plaintiff has withheld information about the real party in interest from the state court and from her, this is a matter to be raised in the state court. To the extent she is arguing that the real party in interest is the Federal National Mortgage Corporation, she has not explained how this fact, if it is one, gives her the right to remove her case to federal court when the corporation is not a named party to the suit. Even if it were a named party to the suit, the right to remove a case to federal court is reserved to the corporation. 12 U.S.C. § 1452(f)(3): “any civil or other action case or controversy in a court of a State or in any court other than a district court of the United States, to which the Corporation is a party, may at any time before the trial thereof be removed by the Corporation.” The statute gives no right of removal to the party adverse to the corporation.

Defendant concedes that she had no valid ground on which to remove this case under diversity jurisdiction. She has no coherent argument for re-labeling the dispute one raising a federal question. Accordingly, plaintiff’s motion for remand will be granted.

Plaintiff has asked for an award of fees and costs because defendant removed the case to this court without having any legitimate ground for doing so. Defendant did not object

to the request, so it will be granted, in an amount to be determined.

Finally, defendant makes a reference to bankruptcy court. It may be that she is suggesting that this case should be considered an appeal from an adverse decision in the bankruptcy court. I am disregarding this suggestion. If defendant wants to take an appeal from the bankruptcy court's decision, she may do so, but such an appeal would not subsume this action.

ORDER

IT IS ORDERED that the motion for remand of this case to the Circuit Court for Wood County, Wisconsin, filed by plaintiff PNC Bank, successor by merger to National City Bank, successor by merger to National City Bank of Indiana, a division of which was FNMC, is GRANTED. The clerk of court is directed to return the case file to the Circuit Court for Wood County. Plaintiff may have until April 5, 2013 in which to file an itemized request for fees and costs; defendant may have until April 15, 2013 in which to object to the amount of fees and costs requested.

Entered this 25th day of March, 2013.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge